In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1021

ISAAC STATES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 488 F.2d 761. The opinion of the district court (Pet. App. B) is reported at 362 F. Supp. 1293.

JURISDICTION

The judgment of the court of appeals was entered on December 5, 1973. The petition for a writ of certiorari was filed on December 29, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the federal mail fraud statute, 18 U.S.C. 1341, applies to the use of the mails to distribute false absentee ballots in an election fraud scheme designed to assure a candidate's nomination in a primary election.

STATUTE INVOLVED

The federal mail fraud statute, 18 U.S.C. 1341, provides:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

STATEMENT

Petitioner was charged in 42 counts of a multiple count indictment[1] with conspiracy to commit and with the commission of mail fraud (18 U.S.C. 371, 1341, and 1342). After a jury-waived trial in the United States District Court for the Eastern District of Missouri, he was convicted on all counts and sentenced to five years' imprisonment. The court of appeals affirmed in a comprehensive opinion (Pet. App. A).

The facts are not in dispute and are outlined in the opinion of the court of appeals. Petitioner, who was a candidate in the 1972 primary for the office of Democratic Committeeman for the third ward in St. Louis, and one Robert Morgan, a candidate for Republican Committeeman from the nineteenth ward, devised a scheme regarding their respective primary elections. Through an acquaintance on the city election board, petitioner and Morgan were able to register a large number of fictitious names as eligible voters for the impending election. At stake in the primary election were both local and federal offices. Just prior to the election, petitioner and Morgan requested that absentee ballots be sent, in the names of the nonexistent voters, to addresses accessible to themselves. By receiving and returning such ballots through the mails, they intended to vote repetitively for themselves. As a result of their requests, 21

[1] Two of petitioner's co-defendants pleaded guilty and four others were acquitted.

ballots were actually delivered by the postal service and retrieved by petitioner and Morgan, while others were sent but not actually delivered, because the route carriers recognized that the persons identified on the envelopes did not live at the addresses indicated. Subsequent action by the Postal Service frustrated the completion of the scheme, and the instant prosecution followed.

ARGUMENT

Petitioner contends that his indictment and conviction under the mail fraud statute is invalid because there was no showing of an intent to defraud anyone of tangible property rights.[2] Petitioner misconceives the proper reach of the mail fraud statute. Its underlying purpose is not to prevent one or more specific types of fraud, but rather to insure the basic integrity of the nation's postal system. As this Court noted in *Parr* v. *United States*, 363 U.S. 370, 389:

> In exercise of that power, Congress enacted § 1341 forbidding and making criminal any use of the mails "for the purpose of executing [a] scheme" to defraud or to obtain money

---

[2] While petitioner was also charged with a conspiracy under 18 U.S.C. 371—which he admits would normally encompass the conduct involved in the instant case—the only portion of Section 371 here involved, as the court of appeals pointed out, is that which makes unlawful any conspiracy to "commit any offense against the United States," and accordingly, if there is no offense under 18 U.S.C. 1341, the indictment would be fatally defective (Pet. A-2, n.2).

> by false representations—leaving generally the matter of what conduct may constitute such a scheme for determination under other laws. Its purpose was "to prevent the post office from being used to carry [such schemes] into effect . . . ." *Durland* v. *United States*, 161 U.S. 306, 314.

See also *United States* v. *Edwards*, 458 F.2d 875, 880-881 (C.A. 5); *United States* v. *Cashin*, 281 F.2d 669, 674 (C.A. 2). The mail fraud statutes are thus purposefully broad in order to assure that all illicit uses of the mails in whatever context, including the type that occurred here, can be reached by the federal government. The postal service was here used in a scheme to defraud voters of their right to an honest election. The gravamen of the offense consists of the use of the federal mails in executing a fraudulent scheme, and, whether the mails are used for a private fraud or a public fraud, this federal service is equally abused. Accordingly, such abuse is equally punishable to assure the integrity of the postal service.

While prosecutions for mail fraud do generally involve schemes to defraud the public of money or other tangible property, petitioner errs in contending that Section 1341 is applicable solely to schemes having pecuniary objectives. In *United States* v. *George*, 477 F.2d 508 (C.A. 7), certiorari denied, 414 U.S. 827, the defendant, a purchasing agent, received kickbacks from suppliers of his employer. The court noted that the employer had in fact not paid any higher than the normal price for the goods purchased by the agent in anticipation of the kickback. None-

theless, a scheme to defraud was recognized because the employer had been defrauded of the defendant employee's "honest and faithful services." 477 F.2d at 514. Similarly, in *United States* v. *Faser*, 303 F. Supp. 380 (E.D. La.), the defendant was convicted of mail fraud for a scheme to deprive the State of the honest and faithful performance of its officers where public officials had been induced to place state funds in certain banks, rather than others, even though the State's deposits were not in jeopardy. See also *Shushan* v. *United States*, 117 F.2d 110 (C.A. 5), and *Bradford* v. *United States*, 129 F.2d 274 (C.A. 5), where the mail fraud schemes involved attempts to deprive the public, through bribery, of the honest and diligent efforts of their public officials. Finally, and directly on point, is *United States* v. *Classic*, 35 F. Supp. 457 (E.D. La.), involving a mail fraud scheme by primary election commissioners to alter the outcome of an election. In upholding prosecution under the predecessor to the current mail fraud statute (18 U.S.C. (1940 ed.) 338), the court noted that "[t]he mail fraud statute denounces *the use of the mails*, in the actual, or attempted, execution of *any* devised scheme or artifice to defraud * * *" (35 F. Supp. at 458; emphasis in original).[8]

[8] Petitioner cites *United States* v. *Randle*, 39 F. Supp. 759 (W.D. La.), as standing for the opposite conclusion with respect to mail fraud prosecutions of election irregularities. However, *Randle*, decided in 1941, was based upon a subsequently discredited notion that "[t]he sovereign and public generally have no property right in the selection of officers of which it or they may be deprived by misconduct, even in

Petitioner seeks to bolster his position by suggesting that, as a matter of policy, Section 1341 should not be interpreted to recognize federal criminal jurisdiction over state elections and other local matters. (Pet. 9-10). Initially, we observe that petitioner's characterization of the election as a local one is inaccurate. While he and his co-conspirators were seeking local party office, the election for which ballots were fraudulently obtained was a general primary in which congressional as well as local candidates were seeking office, and petitioner, if elected party committeeman, would have had a role in federal as well as state party matters. Aside from these facts, however, the legitimacy of a prosecution under Section 1341 for the fraudulent use of the mails for a scheme that violates only state laws is well established:

> The fact that a scheme may violate state laws does not exclude it from the proscriptions of the federal mail fraud statute, for Congress "may forbid any . . . [mailings] . . . in furtherance of

---

general elections." 39 F. Supp. at 760. Since *Randle*, this Court has frequently emphasized the substantiality of the right involved in the enjoyment of casting a ballot not diluted through the addition of other unlawful ballots. See *United States* v. *Saylor*, 322 U.S. 385, 387-388; *United States* v. *Classic*, 313 U.S. 299, 325. *Randle* also relied upon *United States* v. *Gradwell*, 243 U.S. 476, and *United States* v. *Bathgate*, 246 U.S. 220, cited by petitioner. In those two cases, attempts to alter elections by bribery of voters, rather than by diluting votes or preventing citizens from voting, were not deemed indictable offenses under federal law. The subsequent *Saylor* case, however, questioned this distinction and strictly limited the two cases to their narrow factual context. 322 U.S. at 388-389.

> a scheme that it regards as contrary to public policy, whether it can forbid the scheme or not." [*Parr, supra*, 363 U.S. at 389, quoting *Badders* v. *United States*, 240 U.S. 391, 393.]

Petitioner contends (Pet. 13-15) that federal election and civil rights laws do not extend to state elections and thus indicate an intent of Congress to abstain from regulating the conduct of state elections. Regardless of the reach of such statutes (see *Anderson* v. *United States*, No. 73-346, argued March 19, 1974), the mail fraud statute, as we have shown, reaches all uses of the mail to defraud. Nor is this Court's opinion in *United States* v. *Maze*, No. 72-1168, decided January 8, 1974, to the contrary. The decision in *Maze* was based upon the conclusion that the fraud was complete upon the defendant's use of the credit card and that the subsequent use of the mails by a creditor to request payment from a bank was not, in the terminology of Section 1341, a use of the mails "for the purpose of executing such scheme or artifice." In petitioner's case, the use of the mails occurred various times during the course of the scheme to defraud the voters and was essential to the plan.[4]

---

[4] Petitioner, inconsistently, also seeks to impute an improper motive to the United States Attorney by suggesting that the instant prosecution was brought under the mail fraud statutes rather than more specific civil rights statutes because the U.S. Attorney feared the Department of Justice would not approve a request for a civil rights prosecution (Pet. 9). We are informed by the U. S. Attorney that this suggestion is based on a dialogue during oral argument between Judge Ross of the court of appeals below and

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

HENRY E. PETERSEN,
Assistant Attorney General.

JEROME FEIT,
ROBERT PLAXICO,
Attorneys.

MAY 1974.

Mr. David Harlan, the government attorney who prosecuted the case at trial and on appeal. The latter indicated, on being queried by Judge Ross, that the U.S. Attorney's manual does request that prosecutions for voter fraud under 18 U.S.C. 241 be discussed with the Department of Justice in Washington before being pursued. (See Pet. App. A-13.) Such consultation is often time consuming; as the November elections were rapidly approaching and the false names introduced by petitioner prior to the primary election were still on the voters' list, the U.S. Attorney's office decided to prosecute under 18 U.S.C. 1341, as the case involved mail fraud as well as election fraud. The Department of Justice was informed of the pending prosecution and, had it concluded that any policy was being contravened by the prosecution under Section 1341, the case would have been dismissed. No objections to the U.S. Attorney's actions were made by the Department.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1974 539030 245